

Minutes of the September 21st, 2005 meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Chair Jean Ginn Marvin; Hon. Michael T. Bigos; Hon. Vinton E. Cassidy; Hon. Andrew Ketterer. Staff: Executive Director Jonathan Wayne; Counsel Phyllis Gardiner.

At 9:03 A.M., Chair Ginn Marvin convened the meeting. The Commission considered the following items:

Agenda Item #1 – Ratification of Minutes of the July 13th, 2005 and August 10th, 2005 meetings

Mr. Ketterer moved to accept the July 13th and August 10th meeting minutes, Mr. Cassidy seconded, and the Commission voted unanimously (4-0) to ratify the minutes of July 13th and August 10th meetings.

Agenda Item #2 – Definition of Lobbying for Disclosure Purposes

The director invited the staff's PAC, Party & Lobbyist Registrar Martha Currier-Demeritt to walk the Commission through the discussion. Mrs. Currier-Demeritt explained that during her year of employment with the Commission she fielded many questions regarding the definition of lobbying. Commission staff wanted to produce a formal document for lobbyists and potential lobbyists to reference and which would incorporate the guidance that Mrs. Currier-Demeritt provides lobbyist. The proposed lobbying FAQ was formally discussed with the Director, Commission Counsel, and the Lobbyist Registrar and was distributed to all current lobbyists for comments in advance of this meeting. Multiple e-mails and letters were received in response to the FAQ and presented to the Commission members upon their arrival at this meeting. The responses confirmed that there were various interpretations of the term "lobbying" which brought into question the accuracy of current reporting. Therefore, the Commission staff and lobbyists need clarification from the Commission regarding their interpretation of the definition of "lobbying."

The director included in the supplemental materials the statutory definition of lobbying and provided the Commission with an oral synopsis of the history of the statute and significant attempts to amend it. The director explained that many lobbyists read the statute narrowly. The director stated that the commission staff interpreted many of the activities that lobbyists do, such as listening to legislative hearings or sitting in committee rooms as lobbying. The question for the commission is whether lobbying should include only direct communication, preparing testimony and analysis, or should it include the aforementioned activities also. The director explained that the staff relied on prior advice

from commission staff and previously issued formal guidance from the Commission in 2000 to prepare the FAQ.

Chair Ginn Marvin opened the floor to members of the public for further comments.

Mr. Dick Grotton, President of Maine Restaurant Association, took the floor and stated the issue he had was when they, as lobbyists, were advising the public it was important to be clear but the law was so broadly interpreted that it was difficult to do so. He interpreted the FAQ to imply that any of his members who came to Augusta to testify at the Legislature were qualified as lobbyists. He pointed out that it takes a long time in many instances to get to Augusta. Then oftentimes they wait for hours for their particular bill to come up. Mr. Grotton also does not believe that it was the intent of the law for matters discussed at board meetings to be considered lobbying. The current interpretation based on the FAQ would result in many of his members needing to pay the registration fee, a cost not many could afford and they would deem excessive so that they could merely convey their thoughts to their Legislators in person. Furthermore, there is a stigma to being considered a “lobbyist” opposed to a concerned citizen. He also believes that people who are not being paid, but are working just as hard as lobbyists are. Mr. Grotton thought that the last line in the memo was best said “Lobbying is direct communication”; driving and waiting should not be considered direct communication. He also said that maybe the Law should be changed to state exactly what lobbying is rather than a broad interpretation.

Mr. Bigos asked Mr. Grotton how the legislative schedule impacted the Lobbyists in terms of waiting time versus lobbying time. Mr. Grotton responded that there was a lot more waiting than there was lobbying; he went on to say that it was a slow process and recalled having to wait for many hours on more than one occasion. Mr. Grotton’s grave concern was that his entire membership that went to Augusta on any basis would also become registered lobbyists and the expense to the association would be huge.

Chair Ginn Marvin questioned if Mr. Grotton’s biggest concern was that more people would become lobbyists. Mr. Grotton replied that it was in part but not solely and explained that there were numerous filings involved and that late in filings resulted in fines. He explained that there was a big difference between being a private citizen with a cause and reason to be at the Legislative hearings and being a lobbyist.

Chair Ginn Marvin asked the director if a member of Mr. Grotton’s board came to Augusta and lobbied would she now be considered a lobbyist because she had been there more than eight hours.

The director explained the definition of lobbying in the statute identified a person who is “specifically employed by another person for the purpose of...lobbying.”

Ms. Gardiner stated that she felt the same; a person who is being paid to sit and wait for a certain bill to come up is part of the whole lobbying job. They are a representative for the company; the company can only speak through one person.

Chair Ginn Marvin asked Mr. Grotton if he was satisfied with what the Commission had said. Mr. Grotton responded that while in the meeting with them he was; but if a member of the public were to receive the Commission's memo he didn't think they would see it that way. He continued to say that what the memo referred to as lobbying would be interpreted differently by the public.

Mr. David Clough spoke next and was at the meeting on his own behalf as a multi-client lobbyist and elaborated on his previously submitted written comments. Mr. Clough responded to the director's comments regarding the definition of lobbyist and directed the Commission to look at the last sentence of that definition, "...or any individual who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying."

Mr. Clough said that if you put the two definitions together it seemed that the statute was not just for someone who was registered as a lobbyist, but was also there to instruct anyone on what they could do and if that would qualify them as a lobbyist. Mr. Clough felt that the statute didn't seem to make the distinction between what you do as a registered lobbyist or as a non-registered lobbyist. It seemed to pertain to what you do as an individual advocating before the legislature and whether you're getting paid to do that. He went on to say that some people were getting paid to sit before the legislature and some weren't and questioned what was considered advocating. Mr. Clough got the impression that a small business owner, or someone working for the company, who came to Augusta to wait for their bill to come up and were compensated for the time spent driving and waiting might be forced into having to register as a lobbyist. Mr. Clough went on to explain that the driving and waiting part is not direct communication in lobbying. He urged the Commission members to keep in mind that the guidelines ought to be for the general public as well as for lobbyists.

Chair Ginn Marvin thanked Mr. Clough and then opened the floor to the next person.

Mr. Douglas Clopp, of the Maine Citizen Leadership Fund, stated that he thought there was a big question as to what lobbying really was. He explained that his business, a non-profit organization, was very concerned and focused on how much time was spent lobbying its non-profit status. Mr. Clopp explained that he accounts for his time spent lobbying very closely by including travel time, meeting with legislators, waiting in committee rooms, etc. He agreed with Mr. Clough's statement that living close to Augusta resulted in less travel time and lobbying time spent, whereas someone living in Aroostook county would be considered a lobbyist just by making one trip to the State House. Mr. Clopp urged the Commission to seek a balance between what's in the current statute and the memo. He thought the Commission and perhaps the Legal & Veterans Affairs (LVA) committee should consider what qualifies someone as lobbyists on a case to case basis. He suggested that the Commission consider the distinction between a professionally compensated lobbyist and a professional person trying to button-hole legislators on a certain issue; for example harness-racing, casinos, etc. He also urged the

Commission to look at large lobbying firms that employed people to simply monitor important committees. He explained that these people were not there to directly communicate with or lobby, with legislators but there instead to take notes of what happened and then report back to someone at their firm. He continued to explain that these people are being compensated for sitting there and influencing the legislature, but he was unsure if they would be considered lobbyists.

Chair Ginn Marvin thanked Mr. Clopp and opened the floor to the next person.

Mr. Michael Mahoney, an attorney and lobbyist with Preti Flaherty, took the floor and explained that his colleague Ann Robinson submitted their firm's comments but he wanted to elaborate on a couple of points. Mr. Mahoney stated his belief that the statute is very clear. However, if the Commission wanted to broaden that interpretation to cover other activities then a bill should be brought before the LVA committee for a statutory change. He felt everything in the statute now was clear and straightforward. He pointed out that the time he spends waiting at Legislative hearings was not always for one client, as he works other things while waiting which are not related to lobbying. He said most lobbyists do the same so they can work on other items or issues while waiting for their bill to come up. Mr. Mahoney said that it was the intent of the law to capture the time actually spent lobbying, not waiting times, which would result in over-reporting.

Chair Ginn Marvin opened the floor to anyone who had questions.

Mr. Bigos asked for Mr. Mahoney's thought on the current reputation of the legislature and the public perception of the influence of lobbyists, referring to a compensation report that had been in the paper regarding how much lobbyists had made for the year, and what the impact would be if a more expansive definition of lobbying time were adopted.

Mr. Mahoney stated that he felt that it would be a misrepresentation to the public of how much time people were spending trying to influence legislative action. He said that if a lobbying report was issued that said the lobbyist was in a committee hearing for 6 hours, working on an LD, and then the perception would be that you were talking to legislative members for 6 straight hours trying to pass that certain LD. He stressed that this was not always the case. It would overstate the perceived influence of lobbyists and how much they persuade the legislature given the amount of time spent there. He reiterated that most of the time spent at the State House is not spent directly communicating with members but waiting for bill.

Chair Ginn Marvin asked Mr. Mahoney whether he thought the public would notice the amount of time lobbyists reported. Mr. Mahoney stated that he, and other lobbyists, just wanted it to be an accurate compilation of information on how much time is being spent on influencing the legislature.

Chair Ginn Marvin stated that she felt the focus of any attention would be on the changes in the lobbying statute, not how much time or money was involved. Mr. Mahoney countered with his belief that the number the public should care about is how much time

different interest groups spend trying to influence legislation, not how much time is spent at the State House. He thinks the information the public should know is how much time is spent directly communicating with members of the legislature, not how much time was spent waiting for a bill to come up.

Mr. Cassidy said there had to be some connection with a client's bill and how much time was spent actually lobbying for that specific client. Mr. Mahoney replied that he was only speaking for himself and was unsure of other lobbyists billing procedures, but felt that the bill sent to the client for services rendered included time spent going over what was going to be said at the State House, not time spent waiting.

Mr. Cassidy clarified that his point was maybe some lobbyist's bill their clients for the entire day spent at the State House and not just the time spent on their actual bill. Mr. Mahoney reiterated that it was different for every lobbyist.

Ms. Gardiner questioned how Mr. Mahoney read the memo. She thought the staff meant that if you were billing the client for the entire time spent, including wait time, then all that time should be reflected in your report of lobbying activities.

Mr. Mahoney agreed that he read the memo the same way Ms. Gardiner. However, he did not think that the plain language of the statute supported that interpretation. He said that the public interest was served in knowing how much time was spent in influencing, not the waiting time chatting about other things.

The director raised the issue of whether monitoring bills was a part of the process of influencing legislative action. He asked Mr. Mahoney whether he thought there was a public interest in knowing the overall effort that lobbyists exerted in influencing legislative action.

Mr. Mahoney said he thought there were plenty of bills that clients just wanted to watch, and that they had no intention of ever raising their hand to be heard on them. He thought they had a right, like anyone else, to monitor legislation. However, if at some point they wanted to become directly involved then there may be an argument for a look-back on how much time they spent monitoring that bill. However, if someone is strictly monitoring legislation, there should not be a public interest in knowing that. He pointed out that people could listen to what was happening during legislative sessions on to the internet and he didn't think there was any difference between sitting in the State House or at one's office desk.

Chair Ginn Marvin stated that in her experience building relationships with legislators was a part of lobbying. Mr. Mahoney agreed but also stated that he was still not convinced that it was considered direct communication and that there should probably be a distinction between building relationships and simply waiting.

Mr. Bigos asked if the waiting time was included in the definition if it would require the Commission to say that waiting and being present in a room is exerting lobbying. Mr.

Mahoney replied that at some point it would be interpreted that way due to the fact that you are waiting to try and influence a legislative action.

Chair Ginn Marvin thanked Mr. Mahoney and then Mr. Clopp was asked to take the floor again regarding Mr. Bigos previous question.

Mr. Bigos asked Mr. Clopp what the impact on the reputation of the institution of the legislature would be if lobbyists reported the full extent of the time spent on lobbying activities.

Mr. Clopp thought Mr. Mahoney did an excellent job at responding to that question. Mr. Clopp stated that the amounts reported in the news for highly paid lobbyist were unlikely to be the same as the amounts reported to the Commission because the amounts paid by clients are for a broader range of services than just lobbying. Mr. Clopp referred to Mr. Mahoney's statement of time spent educating clients about the dynamics of a particular committee, particular senate chair and stressed that it was all fee for service. Mr. Clopp stated that a very broad definition would perhaps raise the amounts, but stated that he was not privy to other billing schedules from other large firms. Mr. Clopp said just because a person is the highest paid lobbyist, doesn't mean they are the most effective. He reiterated that there is a balance to be reached between actual lobbying and not and the need for public transparency.

Mr. Bigos asked in terms of transparency should the Commission be interested in asking lobbyists to report the direction and communication time, preparation time, listening time and waiting time; to which Mr. Clopp responded that his office already does this. The Lobbyist Registrar does not know of many lobbyists that reported as accurately as Mr. Clopp; to which Mr. Clopp responded that he was so meticulous with his reports because he never wanted to have to appear before the Commission.

The director added that they were interested in what the Commission had to say prior to publishing the lobbyist booklet. However, it could wait until next month's meeting so that the Commission could give it further consideration. The director posed the question of the larger issue of whether the Commission thought that these matters should be handled legislatively.

Mr. Cassidy expressed his concern that a person who worked for a company, who came to the State House on a particular bill, could have to register as a lobbyist. In addition, he was concerned about all the extra work it would be for the Commission and the State. Second, he thought the Commission needed to find some balance. Also, if real significant changes needed to be made to the booklet, or definition of lobbying, then maybe it was something the legislature needed to be able to express their opinions on it. Mr. Cassidy closed by saying that he thought it was important for the Commission to address it so they can make it clear for everyone who participates.

Chair Ginn Marvin suggested that the staff take more time and come back to the next meeting with more information regarding the Lobbying guidelines; no motion was needed.

Agenda Item #3 – Proposed Guidelines for Maine Clean Election Act Expenditures

The director explained that the MCEA did not provide much guidance to candidates on what constituted “campaign related purposes.” After reviewing candidates’ campaign expenditures of public funds in the last election and the Commission staff felt that the MCEA guideline booklet needed some clarification and elaboration. The staff received some comments regarding legislative candidates that were in large districts, campaigning far from home, and their need for lodging during the campaign. The Commission had previously decided that Legislative candidates should not spend public funds on personal lodging and food. The director suggested that the Commission may want to visit this restriction. The director reminded the Commission that it gave more leeway to gubernatorial candidates because they might be required to travel further away for longer periods of time.

The second issue the director wanted to bring up was the clause in the expenditure guidelines regarding, “...Maine Clean Election Act funds may not be used to pay an entry fee for an event organized by a party committee, charity or community organization or to place an ad in an event publication, unless the expenditure benefits the candidate’s campaign.” In effect the advice to the candidate was that if the candidate felt that paying to go to an event or placing an ad would benefit their campaign then they should be allowed to do it; however, if they were just doing it to support their party then it was not viewed as a necessary expenditure.

Chair Ginn Marvin asked the director how the staff would even know. The director explained that it might be better for the Commission members to let the candidates use a certain amount to give to a party they wanted.

In response to Mr. Cassidy’s question, Counsel Gardiner replied that the guidelines were reviewed every election cycle because new issues and questions came up every cycle. Mr. Cassidy responded that the issue he was concerned with was the current mileage reimbursement and if it was going to change at all due to current fuel prices skyrocketing. The director responded that the commission’s accountant said that the gas reimbursement price would stay the same for right now.

Mr. Bigos disclosed that the Senator President’s Office contacted him and expressed concerns with the lodging component for candidates who had a much larger district to cover. Mr. Bigos said that he had been asked whether the Commission would agree to table this item so that additional comments could be given.

Chair Ginn Marvin asked the director if there were any other issues regarding these guidelines.

The director described other issues addressed in the guidelines. The commission was proposing that MCEA funds should not be spent to compensate the candidate for services provided by the candidate. The director referenced a particular campaign when the candidate used \$2,000 in public funds to pay for his non-profit work. Under the statute, MCEA candidates are no longer allowed to use their public funds for the re-count of an election. The commission was proposing that the MCEA funds should not be used to pay civil penalties or fines to the Commission, arrange to make a donation to a charity or a community organization, or to promote political or social positions or causes other than the candidate's campaign. The guidelines also explain that candidates are not allowed to spend public funds on personal attire as some candidates have done in the past.

Chair Ginn Marvin asked if there were any more questions.

Mr. Ketterer questioned the lodging issues and whether candidates should be allowed to use public funds on lodging. He explained that there was a big difference in the sizes of the districts that the candidates had to deal with, for example Washington County in comparison to a district in Portland. While public perception is an important consideration, Mr. Ketterer stated that the underlying issue was whether or not it was part of the campaign. If the candidate cannot use public funds for lodging, the candidate would be making an in-kind contribution to his campaign by paying for the lodging out of their own pocket. That would be a violation of the MCEA. He said that the standard should be whether the expense is a legitimate expense for the campaign or isn't. If it is, then the candidate should use campaign funds whether they were traditionally financed or publicly financed.

Counsel Gardiner suggested that another way to deal with the spending of public funds on lodging would be to leave it up to the candidate to justify whether or not it was necessary for the campaign. The candidate would need to explain why it was necessary for lodging; the Commission would have to look at each individual case.

Chair Ginn Marvin asked how expenditures on meals would be dealt with. Ms. Gardiner offered two options: that meals would not be included as a legitimate expense since everyone needs to eat regardless of whether they're campaigning, or explained that the meals could be a legitimate expense if a candidate had to stay away from home while campaigning.

Mr. Ketterer stated that he thought that part of the problem in developing these guidelines was that they are a reaction to a few problems that have occurred in the past. While that is good from a public policy perspective, he said, it can pose some difficulties in drafting guidelines for 300 or 400 candidates based on problems that 3 or 4 people have caused.

Counsel Gardiner suggested that maybe the wording in the lodging clause of the MCEA Guidelines should be changed. This would eliminate the confusion as to what the candidates can spend their public funds on.

Mr. Cassidy stated that he had seen some limits on meals for some gubernatorial races and wondered if the Commission eliminated the meals on legislative races whether the Commission could also put a limit on lodging. Mr. Ketterer responded that the State already puts a limit on lodging and meal expenses for state employees.

Mr. Bigos stated that he thought this issue originated with Mr. Emery is questions regarding gubernatorial candidates and now the same questions were being raise for the legislative candidates. He stated that he thought that public disclosure and public scrutiny were good safeguards and would catch those questionable cases.

Chair Ginn Marvin questioned whether the task before the Commission was to provide guidelines for the vast majority of candidates and let public scrutiny find problems or to write guidelines that would become so strict that they would be unenforceable. Mr. Ketterer replied that he felt the Commission should give clear guidance on expenditure guidelines, but was concerned about blanket restriction. He said that candidates should look to the Commission for guidance. The Commission should look at the issues that come up every election cycle and review and refine the guidelines on that basis.

Ms. Gardiner thought that worse case scenario would be for a candidate to spend public funds using poor discretion and then they blame is on not understanding the guidelines. Ms. Gardiner suggested that one option for the Commission would be to adopt the gubernatorial guidelines for legislative candidates and use state per diem rates also as guidance. Candidates would be on notice that they would have to justify the expenditures as legitimate.

Chair Ginn Marvin stated that she was concerned with whether volunteered services would be in-kind contribution. The director stated that there was a clause in the rules regarding volunteerism; anyone, including the candidate, could volunteer their personal services as long as they were not paid for those services.

Mr. Bigos moved to table the item until the next meeting, Mr. Ketterer seconded and the Commission voted unanimously to table the item until the next meeting.

At this time Mr. Cassidy left the meeting.

Agenda Item #4 – Proposed Questions & Answers Memo on Lobbyist Contributions

The director explained that the commission staff had been getting a lot questions from Legislators and Lobbyists on the prohibition of lobbyists making campaign contributions and to date there were no guidelines or anything to go by. The director went on to explain that the staff had drafted a two page frequently asked memo as a sort of guideline to answer the basic questions. At this point the director went through the questions and answers on the memo.

Counsel Gardiner stated that she was concerned that the ban as described in the Q & A was broader than the statute.

Doug Clopp took the floor and explained that his attention was focused on what Jonathan had stated. He referred to Governmental Election Law Title 1, Section 715-3, Campaign Contributions and Solicitations Prohibited. Mr. Clopp stated that he did not agree with Counsel Gardiner's declaration that this would open up an exemption, especially for the caucus PACs, to create a sub-account that would be dedicated or earmarked to legislators that were currently in term. He went on to refer to Chapter 1, Section 12, last sentence of number two.

Discussion followed regarding the mentioned Laws and possible re-writes.

Mr. Ketterer moved, Chair Ginn Marvin seconded and the Commission voted unanimously (3-0) to adopt Agenda Item 4 as written.

Agenda Item #5 – Proposed Legislation for Representative Pat Blanchette and Edward R. Dugay

The Commission director described that Representatives Edward R. Dugay and Patricia Blanchette had approached him about legislation requiring Maine Clean Election Act candidates to submit to the Commission member's receipts for all expenditures of public funds and to prohibit the expenditure of public funds to family members of the candidates. The director explained that Rep. Dugay had inquired whether Commission staff could draft the legislation.

The Commission members responded that the Legislators should ask legislative staff to draft the proposed bills.

Agenda Item #6 – Proposed Dates for Future Meetings

This item was not discussed.

The director next introduced the newest members of the commission staff to the members; Paul Lavin, assistant director and Sandy Thompson, candidate registrar.

The Commission director expressed some concerns about verifying that the 2004 campaigns of Julia St. James and Sarah Trundy spent all Maine Clean Election Act funds on campaign-related purposes. Counsel Gardiner stated that she felt the most effective way to proceed was to investigate expenditures of the campaign of Julia St. James and Sarah Trundy and investigate the preparation and distribution of the literature in the special election in House District #18.

Mr. Bigos moved, Mr. Ketterer seconded and the Commission voted unanimously (3-0) to initiate an investigative hearing regarding the above stated issues.

Counsel Gardiner indicated that she thought the Commission members should also vote to include subpoenaing of witnesses for the hearings.

Mr. Ketterer moved, Mr. Bigos seconded and the Commission voted unanimously (3-0) to have Chair Ginn Marvin issue any and all subpoenas to persons in connection with the investigations previously authorized.

There being no further business, the Commission adjourned.